

# **Modernizing Public Hearings for Water Quality Standard Decisions Consistent with 40 CFR 25.5**

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## **DISCLAIMER**

This document does not impose legally binding requirements on the U.S. Environmental Protection Agency (EPA), states, water quality standard (WQS)-authorized tribes, or the regulated community, nor does it confer legal rights or impose legal obligations upon any member of the public. The Clean Water Act (CWA) provisions and the EPA regulations described in this document contain legally binding requirements. This document does not constitute a regulation, nor does it change or substitute for any CWA provision or EPA regulations.

The suggestions on how to incorporate modern technology provided here are not intended to apply in all situations. The suggestions provided are intended to be evaluated to determine if the modernization is appropriate for a particular situation depending on the individual circumstances. These suggestions to modernize are not mutually exclusive nor are they legally binding. The EPA, states and WQS-authorized tribes may find that other approaches are appropriate and those may be implemented on a case-by-case basis. This is a living document and may be revised periodically without public notice. This document is not intended to be an all-inclusive reference on how public hearings must be conducted.

## TABLE OF CONTENTS

Purpose .....	4
Background .....	4
Executive Summary.....	5
Suggested Factors to Consider when Deciding Whether and How to Modernize a Public Hearing .....	8
Best Practices for Modernizing a Public Hearing .....	10
Overviews	
Using Technology to Provide the Public Notice of a Public Hearing .....	13
Using Technology for the Location of a Public Hearing .....	15
Using Technology to Schedule Presentations for a Public Hearing .....	17
Using Technology for Conducting a Public Hearing.....	19
Using Technology to Establish the Record of a Public Hearing .....	21
Appendix A – Summary of Requirements in 40 CFR 25.5 .....	22
Appendix B – Considerations and Example Milestones for Planning an Online Public Hearing .....	24
Appendix C – Potential Language of Notice for a Public Hearing Regarding the Process for Remote Participation.....	27
Appendix D – EPA Online Public Hearing for a Proposed Federal WQS Rule in California .....	29

## PURPOSE

This document provides information for states and water quality standard (WQS)-authorized tribes to consider when preparing to conduct public hearings required by the Clean Water Act (CWA) and EPA's implementing WQS regulation.<sup>1,2</sup> This information is intended to help states and WQS-authorized tribes understand suggestions to modernize – that is, incorporate technologies into – their public hearing processes consistent with EPA's public hearing requirements at 40 CFR 25.5.

States and WQS-authorized tribes can maximize opportunities for effective public input to the WQS decision-making process by using the modernization approaches discussed in this document in appropriate situations. Additionally, states and WQS-authorized tribes could use their resources more efficiently when conducting public hearings by incorporating such technology.

While incorporating technology into the public hearing process may have advantages, states and WQS-authorized tribes are not required to do so and this document does not mandate such use. This document does not set minimum requirements nor does it identify explicitly which circumstances warrant use of technology. Therefore, a state or WQS-authorized tribe has the discretion to modernize its public hearing process, to the extent it deems appropriate on a case-by-case basis. A state or WQS-authorized tribe may choose to either integrate technology by making minor or substantial changes to its public hearing process or retain its current public hearing procedures.

## BACKGROUND

When reviewing or adopting new or revised WQS, states and WQS-authorized tribes are required to hold public hearings in accordance with 40 CFR 25.5 and any other applicable state or WQS-authorized tribal public hearing requirements (CWA sections 303(c)(1), 101(e) and 40 CFR 131.20(b)). For example, section 40 CFR 25.5 includes requirements for providing notice to the public in advance of a public hearing, establishing times and locations of public hearings, scheduling commenters, conducting the public hearing, and providing a record of the proceedings.

The EPA recognizes that 40 CFR 25.5 became effective prior to the common use of technology such as computers and the Internet.<sup>3</sup> Thus, the purpose of this document is to identify opportunities and options for states and WQS-authorized tribes to use technology consistent with the relevant public hearing requirements in 40 CFR parts 25.5 and 131.

Public hearings for WQS are more formal than other public input formats, such as webinars or public meetings (40 CFR 25.6).<sup>4</sup> While webinars or public meetings may serve their own unique purpose for state or WQS-authorized tribes during the WQS process, states and WQS-authorized tribes are required to hold public hearings that comply with 40 CFR 25.5 at least every three years (see 40 CFR 131). As

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<sup>1</sup> "States" in the CWA and this document refers to a state, the District of Columbia, the Commonwealth of Puerto Rico, the U.S. Virgin Islands, Guam, American Samoa, and the Commonwealth of the Northern Mariana Islands. "WQS-authorized tribes" refers to Indian tribes authorized for treatment in a similar manner as a state under CWA section 518 for purposes of administering CWA section 303(c) WQS.

<sup>2</sup> This document may also be relevant for federally promulgated WQS. See 40 CFR 131.22(c).

<sup>3</sup> 40 CFR 25.5 went into effect on Feb. 16, 1979 (FR 44 10292).

<sup>4</sup> In the context of this document the EPA is distinguishing webinars from web conferencing platforms. For additional information, see footnote 5.

such, this document focuses on the public hearing requirements under 40 CFR 25.5 and not on webinars or public meetings.

## EXECUTIVE SUMMARY

The CWA requires states and WQS-authorized tribes to hold public hearings for the purposes of reviewing and adopting new or revised WQS in accordance with 40 CFR 25.5 and provisions of state law or tribal law. This document describes some suggestions a state or WQS-authorized tribe may want to consider when deciding whether and to what extent to either modernize its overall public hearing process or a particular public hearing. States and WQS-authorized tribes have the discretion to decide whether and to what extent to use technology, as appropriate.

For the purposes of this document, “modernizing” or “technology” refers to any use of computers and the Internet in preparing for and/or conducting public hearings. Two examples of ways to modernize public hearings include: (1) using the Internet as one means of providing public notice of an in-person public hearing; and, (2) conducting a public hearing online. Figure 1 below briefly summarizes the suggestions for incorporating technology, organized to show how they relate to the 40 CFR 25.5 requirements.

States and WQS-authorized tribes have choices on if, when, or how to incorporate technology into their public hearing processes regardless of whether choosing to hold the public hearing in-person, online, or as a hybrid of the two. For the purposes of this document, an “in-person” public hearing is when the public can only participate by being physically present at the location where and when the state or WQS-authorized tribe is holding the public hearing. An “online” public hearing, on the other hand, is where the public can only participate remotely from a separate location using a web conferencing platform.<sup>5</sup> A “hybrid” public hearing is where the public is given the option to participate in-person or remotely using a web conferencing platform.

This document begins with “Suggested Factors to Consider” and “Best Practices” to help states and WQS-authorized tribes evaluate the utility and feasibility of the suggestions for incorporating technology. The remainder of this document then explains potential ways to modernize a public hearing, consistent with the requirements of 40 CFR 25.5 subsections (b) through (f). Each overview provides more detail on the subsection’s requirements, suggestions for incorporating technology consistent with that subsection, and additional considerations.

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<sup>5</sup> There are many web conferencing platforms with teleconferencing capabilities to allow communication over a geographic distance through use of the Internet. Such platforms offer many functions that can make it more interactive than typical webinars. For the purpose of this document, when the EPA refers to “online public hearing using a web conferencing platform”, the EPA envisions the use of web conferencing platform functions such as: speaker management (*e.g.*, being able to organize callers), chat management (*e.g.*, being able to read from and respond to comments/questions), and other functions to simulate the experience of an in-person public hearing. Speaker management tools are especially useful. To organize callers, some web conferencing platforms will use a “queue.” A queue is a line or sequence of commenters (either scheduled or unscheduled) waiting to provide their oral comment (this is akin to a line that would form at a standing microphone or podium during an in-person public hearing). An “operator” would have the ability to then unmute the audio of a commenter in the “queue” when their allotted time to speak begins (this is akin to the role of a hearing officer/chairman).

This document also contains four appendices: (1) a summary of the requirements in 40 CFR 25.5; (2) an overview of considerations and example milestones for planning an online public hearing; (3) example language to include in a public notice regarding the process for remote participation when conducting a hybrid or online public hearing; and, (4) an overview of an online public hearing that the EPA conducted in 2019 for a proposed federal water quality standard rule in California.

Some issues that are addressed throughout this document may be similar to the issues that could arise in a traditional public hearing that does not utilize technology. In this case, the state or WQS-authorized tribe should consider how they have addressed the issue in those situations with a goal to be consistent between the two types of public hearings.

Figure 1. Suggestions for incorporating technology in public hearings consistent with 40 CFR 25.5 requirements. See each 40 CFR 25.5 subsection overview (pages 13-21) for more information. Please note, the 40 CFR 25.5 requirements listed in this figure are only highlights and do not reflect 40 CFR 25.5 in its entirety.

## 40 CFR 25.5 REQUIREMENTS

## SUGGESTIONS FOR INCORPORATING TECHNOLOGY

**25.5 (b) Notice:** Public notice well publicized and mailed to the appropriate portions of the list of interested and affected parties required by 40 CFR 25.4(b)(5) at least 45 days prior to the date of the hearing. Public notice may be reduced to no less than 30 days when there are no complex or controversial matters to be addressed by the hearing. Relevant reports, documents and data made available to the public at least 30 days prior to the date of the hearing.

- Advertising online to help “well publicize” a public hearing.
- Using emails and group email lists (*e.g.*, Listservs) to “mail” notices to “interested and affected parties.”
- Posting relevant public hearing materials online to make them “available.”

**25.5 (c) Locations and time:** Public hearings shall be held at times and locations that, to the maximum extent feasible, facilitate attendance by the public.

- Conducting an in-person public hearing simultaneously with the use of a web conferencing platform.
- Conducting an online public hearing using only a web conferencing platform (please see the box on “conducting a public hearing online” at the bottom of this page for more information).

**25.5 (d) Scheduling Presentations:** Schedule witnesses in advance to ensure adequate time for all speakers and include time for unscheduled testimony.

- Using the Internet to “schedule witnesses in advance.”
- Allowing commenters to electronically submit relevant materials or visual aids in advance of a WQS public hearing.
- Allowing unscheduled presenters to register to provide oral comments during an online public hearing.

**25.5 (e) Conduct of hearing:** Provide an introduction to inform the audience of the issues involved in the decisions to be made, the considerations the agency will take into account, any tentative determinations from the agency, and information which is particularly solicited from the public.

- Allowing comments and questions to be made orally through a web conferencing platform.
- Using web conferencing platform’s instant messaging capabilities.

**25.5 (f) Record:** Prepare transcript or some complete record of public hearing proceedings and make it publicly available at no more than cost.

- Recording the proceedings of the public hearing using a web conferencing platform’s “record” option.
- Posting the “complete record” of a public hearing online.

### ***Conducting a public hearing online:***

An “online” public hearing is where each person (or a group) who joins the public hearing does so remotely from a separate location using a web conferencing platform. Note that holding an online public hearing is the most substantive modernization a state or WQS-authorized tribe may choose to integrate.

## SUGGESTED FACTORS TO CONSIDER WHEN DECIDING WHETHER AND HOW TO MODERNIZE A PUBLIC HEARING

As indicated above, a state or WQS-authorized tribe has the discretion to decide whether and to what extent to integrate technology into its overall public hearing process or any particular public hearing.<sup>6</sup> The following factors could help the state or WQS-authorized tribe in making such decisions.

- **The public's accessibility to and acceptance of computers and the Internet:** In some areas, limited access to computers (*e.g.*, in disadvantaged or economically stressed communities) or limited Internet infrastructure (*e.g.*, in rural areas) could affect the public's ability to be notified of or to participate in a public hearing using technology. Additionally, social and cultural practices vary throughout the country (*e.g.*, some tribal communities value in-person interaction over other forms). If states and WQS-authorized tribes want to incorporate technology, they should engage with local community leaders to ensure their public's needs are met and to explore solutions to any potential barriers or concerns (*e.g.*, use a public library or community center to access technology).<sup>7</sup>
- **The capacity of a state or WQS-authorized tribe to integrate and implement technology:** A state or WQS-authorized tribe may wish to consider the time, resources (*e.g.*, funding and available personnel), or learning curve associated with integrating new technology into public hearings. This also includes the resources required to make hybrid or online public hearing accessible to those with disabilities that could hinder their ability to participate using a web conferencing platform (*i.e.*, complying with the Americans with Disabilities Act, and any other applicable requirements, for individuals with hearing or eyesight impairment).<sup>8</sup>

The EPA recognizes a state or WQS-authorized tribe could spend more time, and money, preparing for and conducting a hybrid public hearing because a hybrid public hearing consists of both an in-person and online component. However, a hybrid public hearing could be more economical than holding multiple in-person public hearings and may also reach more stakeholders.

- **The geographic scope of a WQS decision:** If the scope of a WQS decision applies to a small geographic area, an in-person public hearing may be more appropriate to engage the public with the most interest in and information about the waterbodies at issue. On the other hand, when the WQS applies to a broad area, conducting a public hearing with opportunity for remote participation may make it accessible to a broader audience. In particular, a state or WQS-authorized tribe could consider the cost to the public to attend an in-person public hearing (*e.g.*,

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<sup>6</sup> Please refer to Appendix D for an example of how the EPA conducted an online public hearing for a proposed federal WQS rule in California.

<sup>7</sup> For more information regarding challenges that may prevent or hinder meaningful engagement during the public hearing process, visit EPA's National Environmental Justice Advisory Council Report Model Guidelines for Public Participation: <https://www.epa.gov/sites/production/files/2015-02/documents/recommendations-model-guide-pp-2013.pdf>.

<sup>8</sup> For additional accessibility information, see also *Additional Suggested Considerations for Modernizing the Notice of a Public Hearing*, A. Including instructions/information in the public notice concerning the modernized portions of the public hearing on page 14, and *Additional Suggested Considerations for Modernizing how to Schedule Presentations for a Public Hearing*, A. Establishing protocols to make electronic visual aids provided by unscheduled presenters available after the public hearing on page 17.

driving distance from other locations, hotel cost, need to take leave from work) when evaluating the value of modernizing a public hearing.

- **The nature of a WQS decision:** When the state or WQS-authorized tribe expects a high public interest in a particular WQS action, it may wish to consider using technology (*e.g.*, online or hybrid public hearing) to accommodate more participants. On the other hand, conducting an in-person public hearing might be preferable where face-to-face interaction with state or tribal officials is considered important. Alternatively, a hybrid approach may be appropriate to accommodate both the high level of interest and the potential desire for in-person interaction.
- **Presence of any local decision-making or advisory boards:** Some states or WQS-authorized tribes may have a decision-making or advisory board as an interim step between a public hearing and the adoption of a WQS. Members of these state or WQS-authorized tribe's boards may prefer an in-person interaction when receiving comments from the public. It may be important for states and WQS-authorized tribes to consider the board's preferences prior to deciding whether and to what extent to modernize a public hearing.
- **The state or WQS-authorized tribe's overall public participation process:** If a state or WQS-authorized tribe implements other public participation mechanisms (*e.g.*, public meetings or webinars) when engaging the public, such mechanisms could play a role in deciding whether and to what extent to incorporate technology. For example, if a state first holds an in-person public meeting, the public may then be more receptive to an online public hearing after because of the initial face-to-face interaction (informally) at the public meeting.
- **Public feedback on integrating technology both before and after modernizing:** Voluntary surveys (*e.g.*, conducted during registration for an in-person or online public hearing) could be a helpful tool to gather information and gauge the public's interest in integrating technology into future public hearings and which technologies are most effective. For example, a survey may help the state or WQS-authorized tribe determine how the public is currently receiving the public notice (*e.g.*, regulation posting, website, print newspaper, online newspaper, email, or other). With this information, a state or WQS-authorized tribe could select the best way to integrate technology into its public notice process to reach the same, or a broader, audience in the future.
- **Number of participants at each public hearing:** A state or WQS-authorized tribe may find it useful to track the number of participants at each public hearing to assess the utility and effectiveness of its modernized public hearing process. If attendance decreases after a state or WQS-authorized tribe integrates technology, this may indicate the selected technology is hindering public participation and requires improvements to better fit the needs of its communities.

## BEST PRACTICES FOR MODERNIZING A PUBLIC HEARING

The following best practices can help ensure the public is meaningfully engaged in a modernized public hearing.

### *Best Practices for Modernizing Any Public Hearing*

- **Have a transition period to introduce technology into the public hearing process:** States and WQS-authorized tribes could gradually incorporate the use of technology based on the needs and desires of the public, as well as the resources and technical expertise of the state or WQS-authorized tribe. A transition period may reduce public concern over an abrupt, major change in known public hearing processes.
- **Make the participants' experience as similar to an in-person public hearing as possible:** It may be helpful to consider any technology that is integrated into a public hearing should benefit, not hinder, the state or WQS-authorized tribe and the public's experience with public hearings. For example, if commenters attending in person are permitted to use visual aids, other commenters attending remotely should also be able to provide their own visual aids. Furthermore, all participants (whether attending remotely or in-person) should be able to see these visual aids during the public hearing. For more information on web posting presentation materials for unscheduled and scheduled commenters, see *Suggestions to Modernize Scheduling Presentations for a Public Hearing, B. Allowing commenters to electronically submit relevant materials or visual aids in advance of a public hearing* on page 17.
- **Communicate any change in the state or WQS-authorized tribe's public hearing processes through a public notice:** State or WQS-authorized tribes could consider informing the public through traditional channels if and when traditional notifications (e.g., print notifications) will no longer be issued.
- **Start planning the public hearing early:** States and WQS-authorized tribes may find it helpful to consult Appendix B for a list of potential public hearing milestones to help ensure the 40 CFR 25.5 timeline requirements are met (e.g., the public notice and 30-day material requirements).
- **Other Practices:** A state or WQS-authorized tribe may find it beneficial to decide in advance how it will handle late arrivals, requests for extensions, or an overflow of commenters. A state or WQS-authorized tribe may also find it beneficial to provide an overview of proposed WQS changes prior to public hearing and post online. For example, a state or WQS-authorized tribe could post an overview of their WQS package online as a video before the public hearing to explain their proposed amendments to a triennial review.

### *Best Practices for Public Hearings That Utilize a Web Conferencing Platform (i.e., hybrid or online public hearings)*

- **For WQS-authorized tribes with newly granted TAS status, consider conducting in-person public hearings first with public survey:** This practice will provide such tribes with direct experience conducting an in-person public hearing and will allow their public to provide feedback on the potential use of online public hearings. Gathering information through public surveys may prove beneficial for the new TAS tribe to understand the needs and desires of their public.
- **Consider conducting the first public hearing with a web conferencing platform on a non-controversial WQS:** This would give a state or WQS-authorized tribe more time and flexibility to

fix any technical problems because there may be fewer participants and time pressures than there may be for a controversial WQS.

- **Consider developing internal support materials for a public hearing using a web conferencing platform:** States and WQS-authorized tribes may find it helpful to have an internal reference document with detailed directions to navigate the logistics of conducting any hybrid or online public hearing.
- **Conduct an internal dry run:** A hybrid or online public hearing may involve multiple people, such as moderators, presenters, people who manage the web conferencing platform software, people collecting and sorting online questions, and people on standby to address participants' technical issues. Having a few dry runs could help solidify roles and minimize technical issues during the actual hybrid or online public hearing. The dry runs could include: running through the features of the web conferencing platform and establishing the differences between the audience's view and the moderator's view of the web conferencing platform; practicing answering questions submitted by the participants through the online system (for more information on techniques to organize and answer incoming questions, see *Additional Suggested Considerations for Modernizing the Conduct of a Public Hearing, E. Answering questions from remote participants* on page 20); and, practicing transitions between the moderator and the commenters.
- **Offer feasible accommodations for commenters who are remotely participating but unable to provide oral comment:** A state or WQS-authorized tribe conducting a hybrid or online public hearing should consider providing special accommodation, upon request, for remote participants who cannot comment orally for any reason (*e.g.*, lack of proper equipment, participating at a library or similar public venue). For example, the state or WQS-authorized tribe holding the hybrid or online public hearing could allow the commenter to provide a written comment through the web conferencing platform for the state or WQS-authorized tribe to read out loud at the public hearing as long as the commenter is listening in to the public hearing (*i.e.*, this accommodation is not intended to allow absentee oral comments).

In the event multiple commenters have the same exact comment, the state or WQS-authorized tribe may read the comments and mention the names of all commenters associated with it.

Alternatively, the state or WQS-authorized tribe could consider allowing a commenter to designate a pre-arranged proxy to speak on its behalf as long as the commenter is listening in to the public hearing. However, the proxy should clearly identify the author of the comment. The state or WQS-authorized tribe should include instructions in the hybrid or online public hearing's public notice for how to request any special accommodation. See also *Additional Suggested Considerations for Modernizing the Conduct of a Public Hearing, A. Establishing protocols for situations where remote participants are not able to provide oral comments* on page 19.

- **Developing a contingency plan for any technical difficulties with the web conferencing platform:** States and WQS-authorized tribes typically have contingency plans for in-person public hearings to address problems that may be caused from bad weather or power outages (*e.g.*, if an in-person public hearing is scheduled in a building that has flooded). In addition to this kind of contingency planning for in-person public hearings, it may be useful for states and WQS-authorized tribes to have a contingency plan to address technology problems when using a web conferencing platform for a hybrid or online public hearing. Such technology problems may

include: phone line problems, poor Internet connection, or a glitch in the web conferencing platform, among others.

To the extent substantial technical problems occur (*i.e.*, if the online component to a hybrid or online public hearing fails), the state or WQS-authorized tribe may need to provide another public hearing opportunity depending on the case specific facts. To avoid any confusion on whether the state will reschedule a public hearing to meet 40 CFR 25.5 public notice requirements due to technical or logistical problems, a state may wish to consider specifically addressing in the public notice what would occur if such problems arise.

For example, a state or WQS-authorized tribe may specify in the original public notice for a hybrid or online public hearing one of the following: a back-up date for an entire hybrid or online public hearing; a back-up date for the online component of a hybrid public hearing; a disclaimer that the in-person component of a hybrid public hearing will be held and no online component will be rescheduled; or a disclaimer that no rescheduling will occur. The latter option should only be provided if the hybrid or online public hearing is one of multiple public hearings held by the state or WQS-authorized tribe.

To prepare for minor technical problems, states and WQS-authorized tribes could consider including in the public notice a telephone number or email address for participants to contact if they have difficulty logging into a web conferencing platform. The state or WQS-authorized tribe may find it helpful to monitor the telephone or email inbox beginning 24-hours in advance of the public hearing and during each public hearing to troubleshoot any technology problems. States and WQS-authorized tribes could also record an outgoing message on the phone line to communicate basic information with the public. The phone message could include instructions and a link to follow in the event the online component of a hybrid or online public hearing fails.

The EPA welcomes the opportunity to work with states and WQS-authorized tribes interested in identifying effective contingency plans.

- **Clearly communicating duration of the modernized public hearing to the public:** The EPA recognizes that there are a variety of ways to handle the length of a public hearing, whether in-person, online or a hybrid. Particularly when there is limited attendance expected at the public hearing, a state or WQS-authorized tribe could decide whether it would like to keep the hybrid or online public hearing “open” for a set period of time regardless of whether there are commenters still providing input. If yes, then the state or WQS-authorized tribe can identify a start and end time in the public notice.

In situations where there are more commenters than can speak in the allotted time, a state or WQS-authorized tribe could consider making clear in the public notice that it will continue the public hearing for a reasonable time beyond its announced end time to allow for all oral comments to be made. For an example of language to include a public notice of a hybrid or online public hearing, see Appendix C.

## OVERVIEW: USING TECHNOLOGY TO PROVIDE THE PUBLIC NOTICE OF A PUBLIC HEARING

### 40 CFR 25.5(b) Requirements

§ 25.5(b) – “A notice of each hearing shall be well publicized, and shall also be mailed to the appropriate portions of the list of interested and affected parties required by § 25.8(b)(5). Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the date of the hearing. However, where EPA determines that there are no substantial documents which must be reviewed for effective hearing participation and that there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. EPA may further reduce or waive the hearing notice requirement in emergency situations where EPA determines that there is an imminent danger to public health. To the extent not duplicative, the agency holding the hearing shall also provide informal notice to all interested persons or organizations that request it. The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information. Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing. Earlier availability of materials relevant to the hearing will further assist public participation and is encouraged where possible.” (Emphasis added.)<sup>9</sup>

### *Suggestions to Modernize the Public Notice and Suggestions to Modernize Availability of Information*

- A. **Advertising online to help “well publicize” a public hearing:** States and WQS-authorized tribes could consider using Internet based mechanisms to “well publicize” a public hearing. This includes, but is not limited to, posting public notice on: online newspapers, websites (*e.g.*, state or WQS-authorized tribe’s webpages, or Eventbrite), or social media (*e.g.*, Facebook, Twitter).<sup>10</sup> When using these mechanisms, states and WQS-authorized tribes may find it most effective to include links to the notices in noticeable locations on a website (*e.g.*, at the top of a webpage, or on the homepage of the website). Posting a notice must generally occur at least 45 days prior to the date of the public hearing.
- B. **Using emails and group email lists (*e.g.*, Listservs) to “mail” notice to interested and affected parties:** “Mailed” as used in Part 25.5(b) can include physical mail as well as electronic mail (*i.e.*, email) or other electronic mechanisms to send information (*e.g.*, Listservs). When a state or WQS-authorized tribe develops a new Listserv, it could consider offering several ways for the public to subscribe, such as: through a website, through circulation among stakeholders and interest groups, in-person at meetings and conferences, notices in appropriate public buildings, etc. to ensure an inclusive list. Please also consult 40 CFR 25.4(b)(5) that discusses interested

<sup>9</sup> Although the language in 40 CFR 25.5 refers to the EPA, section 25.5(a) provides that this part applies to all non-adjudicatory public hearings under the CWA, which would include public hearings held by a state or WQS-authorized tribe in accordance with section 303(c).

<sup>10</sup> Any mention of trade names, manufacturers or products does not imply an endorsement by the United States government or the U.S. Environmental Protection Agency. The EPA and its employees do not endorse any commercial products, services or enterprises.

and affected parties that should receive notice of the hearing. Mailing such notices must generally occur at least 45 days prior to the date of the public hearing.

- C. **Posting relevant public hearing materials online to make them “available”:** The public notice of a public hearing may be tailored to specify that “reports, documents and data” will be posted online, when permitted by applicable copyright law, and include information about where to find these documents.

It could be useful to make relevant public hearing materials easily accessible to the public online. States and WQS-authorized tribes, by request, may also be asked to share relevant materials in print. These materials, whether provided online or in print, must be available to the public or referenced by source citation at least 30 days prior to the date of the public hearing. For information on web posting materials provided by commenters, see *Suggestions to Modernize Scheduling Presentations for a Public Hearing, B. Allowing commenters to electronically submit relevant materials or visual aids in advance of a public hearing* on page 17.

*Additional Suggested Considerations for Modernizing the Notice of a Public Hearing*

- A. **Including instructions/information in the public notice concerning the modernized portions of the public hearing:** A public notice for a hybrid or online public hearing could include: a link to the public hearing; relevant access codes to log into the web conferencing platform; the number of connections the web conferencing platform can support including information on whether they will be offered on a first come first serve basis; instructions on how to submit materials or visual aids to accompany oral comments; contact information for participants to request special accommodation (e.g., a commenter is remotely participating in a public space and is unable to speak out loud, or requires accommodation in accordance with the Americans with Disabilities Act); and, emergency contact information to troubleshoot technology problems during the public hearing. Additionally, such information could be posted online or included in confirmation emails sent to participants. Potential language for a public notice for an online public hearing can be found in Appendix C.

## OVERVIEW: USING TECHNOLOGY FOR THE LOCATION OF A PUBLIC HEARING

### 40 CFR 25.5(c) Requirements

§ 25.5(c) – “Hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered.” (Emphasis added.)

### *Suggestions to Modernize the Location of a Public Hearing*

Technology has broadened the “place” that “facilitates attendance by the public” to include the use of web conferencing platforms. These web conferencing platforms could allow for public hearings without a physical location. Web conferencing platforms facilitate attendance at public hearings by reducing or eliminating the public’s need to travel and by increasing the accessibility to those who may otherwise be unable to attend in-person at times the public hearing is being offered.

- A. **Conducting an in-person public hearing simultaneously with the use of a web conferencing platform:** A web conferencing platform could be opened up while conducting an in-person public hearing, to allow people to participate over the Internet to comment or listen in live. This is a hybrid public hearing. Hybrid public hearings may involve extra time and resources to handle both in-person and remote logistics.
- B. **Conducting an online public hearing using only a web conferencing platform:** A state or WQS-authorized tribe may hold an online public hearing using only a web conferencing platform (e.g., MediaPlatform, GoToMeeting, Adobe Connect, Skype for Business, and WebEx).<sup>11</sup> For more information about online public hearings, see Appendix B.

### *Additional Suggested Considerations for Modernizing the Location of a Public Hearing*

- A. **Assessing the accessibility and utility of a potential web conferencing platform:** When choosing a web conferencing platform, a state or WQS-authorized tribe may wish to consider the following: are there existing state or WQS-authorized tribal policies or agreements that govern the use of a web conferencing platform or registration system; can a web conferencing platform digitally record the public hearing, to facilitate posting of recordings later; are there firewalls or bandwidth (Internet speed) limitations which would prevent use of certain platforms; how many connections the web conferencing platform can support; and, are there any browser limitations for potential web conferencing platforms (e.g., if the platform is only appropriate for use in a particular browser, participants should be notified of this restriction).

<sup>11</sup> Examples of web conferencing platforms: MediaPlatform, <https://www.mediaplatform.com/>; GoToMeeting, <http://www.gotomeeting.com/>; AdobeConnect, <http://www.adobe.com/products/adobeconnect.html>; Skype for Business, <https://products.office.com/en-us/skype-for-business/online-meetings>; WebEx, <https://www.webex.com/>. Links to websites outside the EPA website are provided for the convenience of the reader. Inclusion of information about a website, an organization, a product or a service does not represent endorsement or approval by the EPA, nor does it represent the EPA opinion, policy or guidance unless specifically indicated. The EPA does not exercise any editorial control over the information that may be found at any non-EPA website.

States and WQS-authorized tribes may also wish to consider using the same web conferencing platform for the public hearing as well as for advance registration of participants. If this is not feasible, the state or WQS-authorized tribe could use a sign-up system that allows easy and quick access to participants' contact information, in case of an emergency just prior to or during a hybrid or online public hearing.

- B. **Consider providing a separate call-in number for participants to use together with the audio/call-in feature of the web conferencing platform:** States and WQS-authorized tribes may provide a call-in number together with a web conferencing platform so that participants can still hear the public hearing proceedings if the web conferencing platform has technical difficulties (e.g., echoing feedback, or the computer's microphone or speaker is not working properly).
- C. **Establishing protocols to ensure those participating remotely have an experience as similar to an in-person public hearing as possible:** Participants using a web conferencing platform should be able to: submit their own materials remotely for their oral comment; have access to any introductory or additional material (e.g., visual aids) shared during the public hearing, including those shared by others during scheduled and unscheduled testimony; and, communicate live to those conducting the public hearing.

The state or WQS-authorized tribe should make these materials available on a webpage, in an email message, or the web conferencing platform itself so that participants could access the materials live. For more logistic considerations, see *Suggestions to Modernize Scheduling Presentations for a Public Hearing, B. Allowing commenters to electronically submit relevant materials or visual aids in advance of a public hearing* on page 17.

States and WQS-authorized tribes may consider web conferencing platforms with features to allow participants to send questions or comments to the state or WQS-authorized tribe conducting the public hearing without disrupting the flow of the public hearing (e.g., a chat box, comments). Where chat boxes are utilized, states and WQS-authorized tribes would need to save all written comments submitted via the online platform's chat box as those comments could be deleted upon closing the web conferencing platform. See 40 CFR 25.5(f). For more information on how to conduct a modernized public hearing, see pages 19 and 20.

- D. **Working with local leaders to designate a common satellite location:** A state or WQS-authorized tribe should consider working with local leaders to designate a satellite location (e.g., public library, school, community center) where the public could gather to participate remotely. This may be especially beneficial when an in-person public hearing is held in the state capital and towns located more than an hour drive from the capital anticipate high public interest in their own communities.

## OVERVIEW: USING TECHNOLOGY TO SCHEDULE PRESENTATIONS FOR A PUBLIC HEARING

### 40 CFR 25.5(d) Requirements

§ 25.5(d) – “The agency holding the hearing shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers. However, the agency shall reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses.” (Emphasis added.)

### *Suggestions to Modernize Scheduling Presentations for a Public Hearing*

- A. **Using the Internet to “schedule witnesses in advance”:** States and WQS-authorized tribes may allot time for scheduled and unscheduled presentations during public hearings, with scheduled presenters typically providing oral comment first. A state or WQS-authorized tribe may “schedule witnesses in advance” using online technology (*e.g.*, via email, an online registration platform, or a website). Please note that the state or WQS-authorized tribe must allot time for unscheduled testimony, as well.
- B. **Allowing commenters to electronically submit relevant materials or visual aids in advance of a public hearing:** Commenters sometimes include materials or visual aids when providing comment at a public hearing. To ensure that a hybrid or online public hearing provides the same experience as an in-person public hearing, states and WQS-authorized tribes should consider providing an opportunity for commenters to electronically submit their materials or visual aids prior to the public hearing. Doing so will allow the state or WQS-authorized tribe to more easily make the materials available to other participants (both remote and in-person) during the public hearing. States and WQS-authorized tribes can provide instructions in the public notice for the public hearing on how to submit materials and how to view them electronically and/or in person.

The EPA recommends that states and WQS-authorized tribes consider establishing protocols for accepting these electronic materials. For example, these protocols could specify (1) the file format or size limit, if any, for an electronic submission; and, (2) the ideal number of days for receipt of materials prior to a public hearing to ensure that materials are uploaded in time for the commenter to present remotely at the public hearing (*e.g.*, two weeks).

- C. **Allowing unscheduled commenters to register to provide oral comments during an online public hearing:** To accommodate unscheduled commenters, states and WQS-authorized tribes may want to consider how best to ensure that the public can obtain any needed access information for a web conferencing platform for a hybrid or online public hearing (*e.g.*, a password, registration of email account online, access codes) after the public hearing has already begun. This can be done by providing the information to the public ahead of the public hearing (*e.g.* in the registration page for the hearing or in the public notice, or in a confirmation email sent to a prospective participant) or by having someone available to provide such information during the course of the public hearing.

### *Additional Suggested Considerations for Modernizing how to Schedule Presentations for a Public Hearing*

- A. **Establishing protocols to make electronic visual aids provided by unscheduled commenters publicly available after the public hearing:** For any public hearing, but especially hybrid or

online public hearings, unscheduled commenters may provide visual aid electronically during the public hearing and may not have shared their materials with the state or WQS-authorized tribe in advance of the public hearing. In the event the state or WQS-authorized tribe holding the public hearing is unable to share those electronic materials during the public hearing, the state or WQS-authorized tribe may wish to make those visual aids publicly available within a reasonable amount of time prior to the close of the public comment period.

- B. **Asking those registering for a hybrid or online public hearing if they intend to provide oral comment:** Providing such information at the time of registration may help the state or WQS-authorized tribe for scheduling purposes (*e.g.*, ensures sufficient time will be allotted for remote commenters).

- C. **Requesting contact information from public hearing registrants for communication purposes:** A state or WQS-authorized tribe may wish to consider asking the public hearing registrants (consistent with state, tribal or local privacy laws) whether they would like to provide their contact information so they can receive updates about the public hearing. This contact information may also be helpful to states and WQS-authorized tribes when sharing follow-up information about the public hearing with participants (*e.g.*, the record of the public hearing).

States and WQS-authorized tribes could also consider using this contact information to create or update a group email list (*e.g.*, Listserv) for future public hearings.

*40 CFR 25.5(e) Requirements*

§ 25.5(e) – “The agency holding the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency’s tentative determinations (if any), and the information which is particularly solicited from the public. The agency should consider allowing a question and answer period. Procedures shall not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).” (Emphasis added.)

*Suggestions to Modernize the Conduct of a Public Hearing*

- A. **Allowing comments and questions to be made orally through a web conferencing platform:** Where a state or WQS-authorized tribe has chosen to conduct a hybrid or online public hearing, participants should be able to comment or ask questions during the public hearing using the web conferencing platform, or, if provided, a call-in number. For more information, see *Additional Suggested Considerations for Modernizing the Location of a Public Hearing*, B. Consider providing a separate call-in number for participants to use together with the audio/call-in feature of the web conferencing platform on page 16.
- B. **Using the web conferencing platform’s instant messaging capabilities:** If available, the state or WQS-authorized tribe could use a web conferencing platform’s features (e.g., a chat box, comments) for participants to ask general clarifying questions of the state or WQS-authorized tribe. For more information, see *Additional Suggested Considerations for Modernizing the Conduct of a Public Hearing*, E. Answer questions from remote participants on page 20.

*Additional Suggested Considerations for Modernizing the Conduct of a Public Hearing*

- A. **Establishing protocols for situations where remote participants are not able to provide oral comments:** As briefly mentioned in *Best Practices* (see page 9), some members of the public may be interested in providing oral comment during an online public hearing but are not able to (e.g., they are using a public computer at a library to participate in an online public hearing). States and WQS-authorized tribes may wish to consider establishing protocols on how to address such situations. In any such protocol, states or WQS-authorized tribes may wish to also indicate in their protocols that they would need participants to make any request at least “XX” hours (e.g., 24 hours) in advance of the public hearing’s start time.  
  
Potential remedies states and WQS-authorized tribes could consider include allowing the prospective commenter to provide, through the web conferencing platform, a written comment which the state or WQS-authorized tribe would read aloud during the online or hybrid public hearing for the record; or allowing the prospective commenter to identify a proxy to read the comment aloud.
- B. **Using web conferencing platform tools to guide commenters when providing their oral comment:** Most web conferencing platforms are equipped with features to guide a commenter. Such tools may include: a digital timer to ensure commenters stay within an allotted time, or the ability to mute a participant’s line when not currently commenting.

- C. **Using web conferencing platform tools to guide participants on how to provide comment when no one is speaking:** In a hybrid or online public hearing, when no commenter is speaking during the scheduled or unscheduled testimony time or when no one is lined up to speak, the state or WQS-authorized tribe could project a slide with instructions on how an attendee may make their oral comment. This will also let participants know that the public hearing is still live.
- D. **Providing clear instructions for remote participants:** States and WQS-authorized tribes could provide a brief overview at the start of a public hearing to ensure those participating remotely understand how they can effectively participate, ask questions, and provide rebuttal comments. See below for a discussion on each of these points.
- i. **Clear instructions on how to effectively participate remotely:** States and WQS-authorized tribes should start a public hearing with an overview of the basic protocols so participants can be fully engaged in a modernized public hearing. This could include: an overview of a web conferencing platform's features; simple ground rules for all commenters; and, instructions for providing an oral comment for the official record. In addition, the state or WQS-authorized tribe should identify where to find any relevant information or data concerning the WQS decision at hand, or the location of any visual aid materials submitted by scheduled commenters. This could include a link to the appropriate docket or a URL for where these materials are housed.
  - ii. **Clear instructions on how remote participants can ask questions:** Remote participants should be permitted to ask questions, both in written form (via chat box or another comment feature, where available) or orally (through the web conferencing platform or audio conference line).
  - iii. **Explaining the process for providing comments:** To manage the flow and avoid disruptions, the state or WQS-authorized tribe conducting the public hearing could explain the protocol to get in the queue for providing comments. If not previously specified, states and WQS-authorized tribes should remind commenters of their allotted time (*e.g.*, 5 minutes, 10 minutes, etc.) to provide their oral comment. States and WQS-authorized tribes may also include a warning that audio connections could be muted if interruptions are made repeatedly.
- E. **Answering questions from remote participants:** The state or WQS-authorized tribe may wish to consider assigning a person to monitor the chat box throughout the hybrid or online public hearing to ensure that all written questions are captured and, if appropriate, organized to facilitate responses. States and WQS-authorized tribes could also designate individuals who are prepared to answer technology questions about the use of the web conferencing platform. States and WQS-authorized tribes may also find it helpful to catalogue substantive questions or comments to be answered at a later date. (For information on saving non-substantive comments, see *Additional Suggested Considerations for Modernizing the Location of a Public Hearing, C. Establishing protocols to ensure those participating remotely have an experience as similar to an in-person public hearing as possible* on page 16.)

## OVERVIEW: USING TECHNOLOGY TO ESTABLISH THE RECORD OF A PUBLIC HEARING

### *40 CFR 25.5(f) Requirements*

§ 25.5(f) – “The agency holding the hearing shall prepare a transcript, recording or other complete record of public hearing proceedings and make it available at no more than cost to anyone who requests it. A copy of the record shall be available for public review.” (Emphasis added.)

### *Suggestions to Modernize the Establishment of the Record for a Public Hearing*

- A. **Recording the proceedings of the public hearing using a web conferencing platform’s “record” option:** Creating a record can include a digital recording or written transcript of the public hearing. Some web conferencing platforms have a “record” feature built in so that video or audio of the public hearing are digitally recorded without additional software. States and WQS-authorized tribes should confirm any recording of the public is consistent with their state laws prior to incorporating this technology. Some states and WQS-authorized tribes may also find it useful to transcribe from the recording and use a written transcript for the record in addition or instead of the audio/video recording.
- B. **Posting the “complete record” of a public hearing online:** A state or WQS-authorized tribe could post a PDF of the public hearing’s transcript, post an audio file of the public hearing’s proceedings, or post a video recording of the public hearing online to make the record “available for public review.” When a state or WQS-authorized tribe posts an audio or video recording of a public hearing online, the state or WQS-authorized tribe should maintain any extended periods of silence to demonstrate that the record was not tampered with.

## **APPENDIX A**

### Summary of Requirements in 40 CFR 25.5

## Summary of Requirements in 40 CFR 25.5

Please note, text in quotation marks is regulatory text.

### Part 25.5(b) Notice.

- **Well publicized notice 45 days in advance of the public hearing:** “A notice of each hearing shall be well publicized, and shall also be mailed to the appropriate portions of the list of interested and affected parties required by §25.4(b)(5). Except as otherwise specifically provided elsewhere in this chapter, these actions must occur at least 45 days prior to the date of the hearing. However, where EPA determines that there are no substantial documents which must be reviewed for effective hearing participation and that there are no complex or controversial matters to be addressed by the hearing, the notice requirement may be reduced to no less than 30 days. EPA may further reduce or waive the hearing notice requirement in emergency situations where EPA determines that there is an imminent danger to public health.”
- **Informal notice where not duplicative:** “To the extent not duplicative, the agency holding the hearing shall also provide informal notice to all interested persons or organizations that request it.”
- **Content of Notice:** “The notice shall identify the matters to be discussed at the hearing and shall include or be accompanied by a discussion of the agency's tentative determination on major issues (if any), information on the availability of a bibliography of relevant materials (if deemed appropriate), and procedures for obtaining further information.”
- **Relevant documents shared with the public at least 30 days in advance of the public hearing:** “Reports, documents and data relevant to the discussion at the public hearing shall be available to the public at least 30 days before the hearing. Earlier availability of materials relevant to the hearing will further assist public participation and is encouraged where possible.”

### Part 25.5(c) Locations and time.

- **Choose a place and time that is convenient for the public:** “Hearings must be held at times and places which, to the maximum extent feasible, facilitate attendance by the public. Accessibility of public transportation, and use of evening and weekend hearings, should be considered. In the case of actions with Statewide interest, holding more than one hearing should be considered.”

### Part 25.5(d) Scheduling presentations.

- **Schedule commenters in advance of the public hearing:** “The agency holding the hearing shall schedule witnesses in advance, when necessary, to ensure maximum participation and allotment of adequate time for all speakers.”
- **Also allot time for unscheduled commenters:** “However, the agency shall reserve some time for unscheduled testimony and may consider reserving blocks of time for major categories of witnesses”

### Part 25.5(e) Conduct of hearing.

- **Provide an introduction of the issue to be discussed at the public hearing:** “The agency holding the hearing shall inform the audience of the issues involved in the decision to be made, the considerations the agency will take into account, the agency's tentative determinations (if any), and the information which is particularly solicited from the public.”
- **Consider holding a question and answer period:** “The agency should consider allowing a question and answer period. Procedures shall not unduly inhibit free expression of views (for example, by onerous written statement requirements or qualification of witnesses beyond minimum identification).”

### Part 25.5(f) Record.

- **Make a record of the public hearing and make it publicly available:** “The agency holding the hearing shall prepare a transcript, recording or other complete record of public hearing proceedings and make it available at no more than cost to anyone who requests it. A copy of the record shall be available for public review.”

## **APPENDIX B**

### Considerations and Example Milestones for Planning an Online Public Hearing<sup>12</sup>

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<sup>12</sup> Please note this list is not intended to be comprehensive or prescriptive. It is a tool the EPA has used in the past for its own public hearings and found useful.

## **Considerations and Example Milestones for Planning an Online Public Hearing**

### ***Online Public Hearing Considerations***

An online public hearing, first defined in the executive summary of this document, is where the public can participate remotely using a web conferencing platform. This involves integrating technology when preparing and conducting a public hearing. As such, states and WQS-authorized tribes are encouraged to consider the following key points when planning an online public hearing.

- Carefully explore the requirements and accessibility of a web conferencing platform to ensure that it will work for the situation.
- Determine whether more than one public hearing is needed on a case-by-case basis.
- Prepare contingency plans for each public hearing.
- Provide clear instructions on how the public can participate, provide comments and access materials for the hearing.
- Treat comments received from scheduled and unscheduled commenters in the same manner as those received at an in-person public hearing.
- Consider oral comments along with written comments (both in the docket and chat box).

The EPA has conducted online public hearings in seven separate instances when proposing/promulgating Federal WQS between 2015 and 2019. For more information of an example of how the EPA met the 40 CFR 25.5 requirements in an online public hearing, see Appendix D.

### ***Example Milestones for Online Public Hearing Schedule***

The next page contains suggested milestones for planning an online public hearing. These suggested milestones are based on the EPA's previous experiences planning online public hearings where the notice, scheduling of presenters, conduct, and record of the public hearing was also modernized. A state may develop its own milestones or pick which milestones would be helpful for planning its modernized public hearing.

Milestone	Target Date	Completed
60-days out		
Confirm hearing dates and times with management		
Develop text for announcements		
Finalize an updated list of interested and affected parties		
Coordinate with relevant persons or offices for managing press coverage		
Determine how to manage translations for non-English speaking participants		
Begin planning with contractor (if needed)		
Develop webpage for hearings		
Explore web conferencing platforms to conduct the online public hearing		
Make arrangements for any audiovisual or presentation equipment		
Explore protocol for calling up and timing commenters		
Develop draft agenda for the hearing		
45-days out		
Post the public hearing notice using traditional or modernized approaches		
Consider translation for non-English speaking participants		
Identify public hearing roles (e.g., moderator, chat box monitor)		
Open online registration for the online public hearing		
Brief management on status of plans		
30-days out		
Post advance materials on relevant sites		
Develop logistics sheet for agency attendees/practice run		
Finalize protocol for calling up and timing commenters		
Review registration statistics to evaluate plans		
Brief management on status of plans		
20-days out		
Develop presentation slides for overview presentation (if needed)		
Review registration statistics to evaluate plans (scheduled vs. unscheduled testimony)		
Do a practice run of timer and web conferencing platform with 'mock' participants		
Coordinate with any participant requesting accommodations (allow requests until the day of the public hearing)		
Brief management on status of plans		
15-days out		
Finalize any relevant materials as needed		
Review registration statistics to evaluate plans.		
1-week out		
Final electronic visual aids (if any) received, organized, and uploaded online		
Brief management on status of plans		
<b>Hearing Date(s)</b>		

## **APPENDIX C**

Potential Language of Notice for a Public Hearing Regarding the Process for Remote Participation

## Potential Language of Notice for a Public Hearing Regarding the Process for Remote Participation<sup>13</sup>

Example language to include in a public notice for a generic online public hearing:

Persons wishing to attend this online public hearing should register in advance no later than [insert time, date]. To register, go online to [this website] and follow the registration prompts. Teleconferencing will be available for individuals participating via the Internet or phone. The number of online connections available for the hearing is limited and will be offered on a first-come, first-served basis. To ensure adequate time for public comment, individuals or organizations interested in making a statement should mention their intent when they register. Please note that each public comment is limited to XX minutes. To submit visual aids to support your oral comment, please see guidelines and instructions at [this website]. Registration will remain open for the duration of the hearing itself for those wishing to provide oral comment during unscheduled testimony; however, early registration is strongly encouraged to ensure proper accommodations. [Insert language to clarify whether the public hearing will end late consistent with the *Best Practice* on page 11 to *Clearly communicate duration of the modernized public hearing to the public.*] [Insert name of agency holding the hearing] will do its best to include all those interested in attending this online public hearing. Please contact [this specific individual] with any questions or concerns you may have, to request special accommodation for the day of the hearing, or if you experience any technical difficulties during the public hearing. [Insert language relevant to your contingency plan. This should include information about make up dates consistent with the *Best Practice* on page 10 *Develop a contingency plan for any technical difficulties with the web conferencing platform.* If no make-up date will be offered, state that clearly as well.]

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<sup>13</sup> Notices for a public hearing must address all requirements of 40 CFR 25.5(b).

## **APPENDIX D**

EPA Online Public Hearing for a Proposed Federal WQS Rule in California<sup>14</sup>

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<sup>14</sup> This example is not intended to suggest that this is the only way to meet the 40 CFR 25.5 requirements.

## EPA Online Public Hearing for a Proposed Federal WQS Rule in California

On March 19 and March 20, 2019, the EPA held online public hearings for a federal proposal to establish a selenium aquatic life and aquatic-dependent wildlife criterion in California. Below is an outline of how the EPA met, at the time of publication of this document, the 40 CFR 25.5 requirements in these online public hearings.

Because the EPA has not yet finalized this rule at the time of publication of this document, this outline only reflects the Agency's progress to date in meeting the 40 CFR 25.5 requirements.

### Part 25.5(b) Notice.

1. Where was notice posted?
  - EPA website- Posted more than 45 days in advance of first hearing (12/3/2018 and 1/31/2019) with details of the public hearings and relevant links for registration and information (see *What was the content of the notice?* below for details).
  - Group Email Posting- Sent on 12/3/2018 and 1/31/2019 to interested and affected parties with details.
    - California-specific Listserv confirmed by California State Water Resources Control Board as well as an EPA Region 10 tribal email list.
    - Additional email notifications shared with interested parties that were identified by the EPA as the proposed rule was being drafted.
  - Federal Register Notice- Published on 12/13/2018 and 2/12/2019, directing readers to EPA's website for details of the public hearings. FR notice only says that there will be online public hearings, but that details will be available on EPA's website. FR notice not intended to serve 45-day notice but to ensure reach to wide audience.
2. What was the content of the notice?
  - Dates and times of the hearings, and a link to EPA's website for more information on the hearings including links to register for the public hearings.
  - Content of the EPA's website:
    - Agenda that specified the EPA will make a brief presentation, followed by a period of time for public comments (3 minutes each).
    - Specified that commenters will have the option to submit visual aids to accompany their oral comments.
    - Also specified that the hearings will be recorded and transcribed, and the EPA will consider oral comments along with all written comments when developing the final rule (provided a link to regulations.gov where interested parties could submit written comments in addition to or in lieu of oral comments at the hearing).
  - Registration page for the public hearings:
    - The EPA asked for: Name, Position, Organization/Affiliation, "Do you intend to make a 3-minute comment at the public hearing?", "How did you receive notice of this public hearing?"
    - The EPA provided: Link to the Proposed Rule; link to the docket for the Proposed Rule; email address and instructions to submit visual aids or presentation to accompany oral comments (See below under § 25.5(d) *Scheduling presentations*); and, contact information in case anyone needs special accommodations.

**Part 25.5(c) *Locations and time.***

1. Two hearings, two different days, one morning, one evening:
  - 3/19/2019, 9am-11am Pacific Time and 3/20/2019, 4pm-6pm Pacific Time.

**Part 25.5(d) *Scheduling presentations.***

1. Advance registration was held for the public hearings.
  - Allowed people to identify themselves if they wish to attend and/or provide oral comment.
  - Identified a set time (*e.g.*, three minutes for each oral comment).
2. Registered individuals who had indicated their intent to make an oral comment were informed about their ability to submit visual aids.
3. Oral commenters could submit visual aids via email to the contractor that were then posted in the web conferencing platform tool by last name of commenter. The EPA's final technical specifications concluded there was no size limit for a visual aid submission.
4. Participants were able to access any visual aids through the web conferencing platform under the "Downloads" tab at their convenience.
5. The EPA did not project any visual aids during the online public hearings, but the EPA provided instructions letting participants know where they could go to view the visual aids when the oral commenter was presenting (to ensure the impact of the visual aid was made while the commenter was speaking).
6. On the day of the hearing, the operator posted a call-in number and people called in and made their comments in the order they called.

**Part 25.5(e) *Conduct of hearing.***

1. The EPA provided a short presentation overview at the beginning of each hearing to cover the issues involved in the decision to be made, the considerations the agency planned to take into account, the agency's tentative determinations (if any), and the information which was particularly solicited from the public.
2. The EPA did not provide a substantive Question and Answer period (it is not required). That said, the EPA responded to written requests for clarification during the hearing via the web conferencing platform's interactive Q&A feature and responded orally to clarifying questions raised by oral commenters as time allowed. The EPA decided it will respond to the oral comments, questions raised during the hearing that the EPA did not yet answer, and other written public comments in its response to comment document that will be made public when the final rule is published in the FR.

**Part 25.5(f) *Record.***

1. The EPA recorded the hearings and made them available to the public upon request.
2. The contractor transcribed each of the comments (along with commenter names and affiliations) so they could be added to and collated with the written comments on the rule.
3. The public can access the transcribed oral comments in EPA's docket along with all other public comments for the rule. Links to the transcribed oral comments in the docket were provided on the EPA website.